NATHAN ARUMUGAM

v.

CHIN JIN TSE

HIGH COURT MALAYA, KUALA LUMPUR
AJAIB SINGH J
[ORIGINATING SUMMONS NO. P 26 OF 1981]
6 SEPTEMBER 1982

LIMITATION: *Application for leave to extend time to bring intended action.*

The intended plaintiff applied for leave for extension of time pursuant to and for the purposes of the Limitation Act, 1953 in respect of an intended action for personal injuries occasioned by the intended defendant's negligence. The intended plaintiff's action had been delayed by the insurers' failure to supply particulars of the policy issued to the defendant.

Held:

[1] The Court had no jurisdiction to extend the period of limitation under the Limitation Act 1953. The intended plaintiff could bring the action and if limitation was pleaded it could be tried as a preliminary issue or at the trial proper.

[2] The insurers' delay would have to be considered in arriving at a decision as to the date when the intended plaintiff's action accrued. The delay, however, did not constitute fraud within the meaning of s. 29(b), Limitation Act, 1953.

Cases referred to:

Lee Lee Cheng v. Seow Peng Kwang [1958] MLJ 271
Central Electricity Board v. Commissioner of the Federal Capital and others [1967] 2 MLJ 161
Lee Kah Hong v. Teoh Tiang Guan [1971] 2 MLJ 223

Legislation referred to:

Limitation Act 1953, s. 29(b), 6

Other source referred to:

Chitty's Queen's Bench Forms 20th Edn., Form 1510
Halsbury's Laws of England 4th Edn., Vol., 28 para. 622

For the plaintiff - R.K. Nathan
For the defendant - David Lingam

JUDGMENT

Ajaib Singh J:

This was an application by the intended plaintiff for leave pursuant to and for the purposes under Limitation Act 1953 in respect of an intended action by the intended plaintiff against the intended defendant for damages for personal injuries occasioned to the intended plaintiff by reason of the negligence on the part of the intended defendant, his servant or agent. The form used by the intended plaintiff is to be found in *Chitty's Queen's Bench Forms* 20th Edn., Form 1510.

The facts leading to the application and which were not in dispute are set out in the supporting affidavit of Mr. R.K. Nathan counsel for the intended plaintiff. On 22 September 1974 the intended plaintiff received injuries in a motor accident involving motor vehicle no.

BM 691 and on 5 October 1975 he instructed Mr. Nathan to pursue a claim for damages. On 26 October 1974 Mr. Nathan wrote to the OCPD at Klang requesting for the relevant documents pertaining to the accident but there was no response. On 24 March 1978 Mr. Nathan wrote to the RIMV for particulars of motor vehicle BM 691. On 24 April 1978 the RIMV acknowledged receipt of the letter but gave no particulars. Mr. Nathan then sought the assistance of the Motor Insurers' Bureau (MIB). On 17 July 1978 the MIB issued a circular to its members in the following terms -

Accident on 22.9.74 - m/cycle BM 691.

The Bureau has been advised of the above accident.

Will the member concerned who was on risk advise the Bureau

(a) the name and address of the registered owner at the date of the accident;

(b) the insurance policy effective at the time of the accident

not later than 7 August 1978.

If there is no response, the Bureau will investigate and if it subsequently transpires that there is insurance coverage by a member, the Bureau will have no alternative but to look to that member for reimbursement of all expenses incurred.

There was no response to this circular.

On 11 March 1980 Mr. Nathan received a letter from the MIB stating that Prudential Assurance Company Ltd. had been retained by them to investigate on their behalf. Mr. Nathan by letter dated 15 March 1980 wrote back to the MIB offering assistance in the investigations. As the matter would have been time-barred by 22 September 1980 Mr. Nathan sought and received confirmation from the MIB on 2 October 1980 that the MIB would waive the time-bar aspect. Finally Mr. Nathan received copy of a letter dated 27 February 1981 by the MIB and addressed to Malaysia British Assurance Sdn. Bhd. as follows:

I refer to Circular No: 131 of 1978 and in particular the last paragraph.

Investigations disclose you as on risk vide C/N 28042822 for 22 March 1974 to 21 March 1975.

By copy of this letter I am asking third party lawyers to deal direct.

Please reimburse the Bureau RM190 adjusters fees incurred.

Upon obtaining particulars of the insured (the intended defendant) from the Malaysia British Assurance Sdn. Bhd. on 16 March 1981 Mr. Nathan sent a notice to the intended defendant by AR. registered post on 26 March 1981 to admit liability or face action but this letter was returned undelivered. On 16 May 1981 Mr. Nathan wrote to Malaysia British Assurance Sdn. Bhd. to negotiate a settlement of the intended plaintiff's claim and on 28 May 1981 a reply was sent by the solicitors for the insurers to the effect that the intended plaintiff's action was statute-barred.

Mr. R. K. Nathan states further in his affidavit that it was only on 27 February 1981 that he came to know that Malaysia British Assurance Sdn. Bhd. were on risk through the letter from MIB and this was as a result of continued efforts by him and the MIB since the date of the accident on 22 September 1974. And it was only on 16 March 1981 that he got the particulars of the intended defendant from the insurers.

Mr. David Lingam for the intended defendant admits that the insurers had received the circular by the MIB but contended that the present application should be dismissed as the Court had no jurisdiction to extend time. In support of his submission he cited the cases of *Lee Lee Cheng v. Seow Peng Kwan* [1958] MLJ 271 and *Central Electricity Board v. Commissioner of the Federal Capital & Ors* [1967] 2 MLJ 161. It was held in both these cases that the Court had no jurisdiction to extend time except where such power was expressly given to the Court under any provision of the law. Mr. David Lingam also cited the case of Lee Kah Hong v. Teoh Tiang Guan [1971] 2 MLJ 223, where it was held that "the discretion to renew the writ and enlarge the time would not be exercised in the plaintiffs' favour as to do otherwise would deprive the second defendant of the benefit of a limitation which has accrued well before the application for extension was made."

Mr. R. K. Nathan submitted that the time for filing suit should not run from the date when the intended plaintiff came to know of the particulars of the intended defendant and of the insurers of the motor vehicle. He also submitted that the insurers were guilty of fraud within the meaning of s. 29(b) of the Limitation Act and therefore the period of limitation should run from the date when the particulars of the intended defendant and insurers were made available after investigation.

I allowed the application by the intended plaintiff but now upon reflection I think I ought not to have granted the application but should have dismissed it in *limine.* I shall say more on this later in my judgment.

Under s. 6 of the Limitation Act 1953 the intended plaintiff has to bring his action within 6 years from the date when the cause of action accrued. If time was to run from the date of the accident then the intended plaintiff's claim was statute-barred but it would not be statute barred if time was to run from the date when the intended plaintiff got the particulars of the intended defendant. "A cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when there are present all the facts which are material to be proved to entitle the plaintiff to succeed" (*Halsbury's Laws of England* 4th Edn., Vol., 28 para. 622).

In the present case there were in existence the person who could sue and the person who could be sued. And if the identity and other particulars of the person to be sued are material then the date from which the cause of action accrued would be 16 March 1981 when the insurers supplied the particulars of the intended defendant to Mr. R. K. Nathan. The intended plaintiff had done all he could do to get the particulars of the intended defendant and of the insurers. The insurers admitted receiving the circular which was sent out by the MIB well within the limitation period but the insurers failed deliberately or otherwise to supply the particulars of the policy which they had issued to the intended defendant in respect of the motor vehicle which was involved in the accident. The insurers gave no reason why they did not comply with the MIB circular. Not until the MIB caused an investigation to be made did the insurers supply the particulars by which time the 6 years' limit had passed. All these facts and circumstances will have to be considered in arriving at a decision as to the date when the intended plaintiff's action accrued.

With regard to Mr. Nathan's contention that the insurers were guilty of fraud within the meaning of s. 29(b) of the Limitation Act I would say that there is no merit in this submission. Section 29(b) applies only where "the right of action is concealed" by fraud. In this case the right of action in tort which was available to the intended plaintiff was in no way concealed by anyone. The intended plaintiff knew of his right of action on the very day of the accident and to pursue his right of action he saw Mr. Nathan some 14 days after the accident. The intended plaintiff cannot have recourse to s. 29(b) of the Limitation Act.

On 16 November 1981 I made an order in terms of the application by the intended plaintiff but now after going into the matter in greater detail and carefully comparing the English and Malaysian legislation on limitation I think I was quit wrong in entertaining the application let alone allowing it. There is provision enabling the Courts in England to extend the period of limitation under the Limitation Act 1939 as amended and extended by the Limitation Act 1963. But there is no such provision in our law and therefore there was no basis upon which the intended plaintiff could make his application. Now that the intended plaintiff knows the particulars of the intended defendant and his insurers he can sue the intended defendant for damages arising out of the motor accident and if limitation is pleaded it can be tried as a preliminary issue or the trial proper.

Also found at [1982] CLJ 555